

STATUS OF CLAIMS AND SUPPORT FOR CLAIM CHANGES
(37 C.F.R. §1.173(c))

1. The status of the claims as a result of the amendment submitted herewith is:

Claims 1-3, 5-10, 12, 13, 15 and 16 are pending.

2. The support in the disclosure of the patent for the changes made to claim 1 herein:

Claim 1: Col. 1, lines 53-55; col. 2, line 59 to col. 4, line 2; and col. 4, lines 40-48.

R E M A R K S

Applicant notes with appreciation that the previous amendment after Final has been entered for the purpose of Appeal and pre-Appeal brief conference.

1. Status of claims:

Claims 4, 11, 14, 17, 18 and 77 have been canceled. Claims 1-3, 5-10, 12, 13, 15 and 16 are pending.

2. Request for withdrawal of Finality as premature:

Applicant respectfully repeat his requests that if this application is not allowed, the finality of the current Office Action be withdrawn as premature because the grounds of rejection are new.

In particular, the rejection in the FINAL office action, that claim limitations related to the identification code are considered non functional descriptive material, was first made in this FINAL office action and was not caused by amendments made by the applicant. In fact, the FINAL rejection was based on claim 1 as originally issued which included this claim language.

Further, as noted below, the anticipation rejection of claim 1 is not a prima facie rejection under 35 U.S.C. 102(e) because Freney does not teach the use of the identification code as claimed (and the Examiner's statement that such identification code as claimed is considered non function descriptive language does not apply to the anticipation rejection as presented by the Examiner).

Claim 1 has been amended to clarify the identification code claim language is not non-functional descriptive language.

Further, as noted below, the obviousness rejection is not a prima facie rejection under 35 U.S.C. 103(a) because even if Freeny were modified so that identification code as claimed were input to control unit 34, Freeny does not teach that data input to control unit 34 is applied to the software carrier as claimed in claim 1. Control unit 34 acts as a gate keeper to authorize data held elsewhere to be applied to the software carrier to assure that such data is only applied when appropriate royalty payments are made.

3. Applicant's responses to the rejections

Claims 1-10, 12, 13, 15 and 16 stand rejected under 35 U.S.C. 102(e) as anticipated by Freeny. Claim 1 has been amended and claim 4 has been canceled.

Applicants traverse this rejection as not being a prima facie 102(e) rejection in that Freeny does not teach the claimed elements. Although in par. 11 of the FINAL Action, the Examiner has stated that in the rejection of claim 1 under 35 U.S.C. 103(a) as obvious over Freeny, claim limitations related to the identification code are considered non functional descriptive material, this basis for rejection was not stated by the Examiner to apply to the anticipation rejection.

The embedding of purchaser identification, point of sale identification or date of purchase cannot be anticipated by Freeny which does not teach the embedding of such identification codes but rather teaches only embedding "owner codes, catalog reproduce codes or catalog transmit codes" as noted by the Examiner.

4. Continuing traverses

Applicant respectfully continues his traverse to statements in the FINAL action that Freeny discloses:

a) memory within digital storage unit 86 in POS 14 which anticipates the claim element "a memory for storing software for distribution to customers" as claimed in claim 1;

b) means for embedding an identification code in the software within reproduction unit 24 which anticipates the claim element "means for embedding said identification code on the software carrier" as claimed in claim 1; and

c) means for preventing copying which anticipates the claim element "means for preventing copying of software copied onto the software carrier" as claimed in claim 4 in that Freeny can be said to teach the use of "owner codes, decipher program, to prevent copying information onto the software carrier rather than preventing copying of software already on the software carrier.

5. Applicants' response to the obviousness rejection:

Claims 1-10, 12, 13, 15 and 16 stand rejected under 35 U.S.C. 103(a), as obvious over by Freeny. Claim 1 has been amended and claim 4 has been canceled.

The Examiner has rejected these claims stating that it would have been obvious to modify Freeny to input purchaser identification, such as credit authorization, into manufacturing control unit 34 because Freeny allows the inputting of "other various data" into control unit 34 based on his position.

Applicants continue to traverse this rejection as not being a prima facie §103(a) rejection because control unit 34 does not reproduce the received information in a software carrier, but rather provides the authorization select code on line 50 to manufacturing unit 36 which permits unit 36 to decode the encoded information provided thereto by file unit 32 on line 48 so that it can be applied by reproduction unit 24 for application to the

software carrier.

Applicant respectfully continues his traverse of the Examiner's statement that the identification code language is non functional descriptive language and has amended claim 1 to clarify the functional nature of this language. The embedding of the identification code prevents copying by identifying the selected software provided to the customer on the software carrier. That is, a copy of software used by person A can quickly and easily be evaluated to determine if the identification code for person A is embedded in that software.

Applicant respectfully requests that the rejection of the claims be reconsidered in light of the amendments made herein and this case be passed to issue. If not passed to issue, applicant respectfully requests that the finality of this action be withdrawn because the rejections are not prima facie rejections. If the finality is not withdrawn, applicant respectfully requests that this supplemental amendment after FINAL be entered to reduce issues on Appeal and at the pre-Appeal brief conference.

Respectfully Submitted,

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